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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,004	03/18/2004	Avi Costo	P18340	7782
46915 7590 04/16/2009 KONRAD RAYNES & VICTOR, LLP. ATTN: INT77 315 SOUTH BEVERLY DRIVE, SUITE 210 BEVERLY HILLS, CA 90212				
EXAMINER				
TRAN, PHUC H				
ART UNIT		PAPER NUMBER		
2416				
NOTIFICATION DATE		DELIVERY MODE		
04/16/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

krvuspto@ipmatters.com

Office Action Summary

Application No.

10/805,004

Applicant(s)

COSTO ET AL.

Examiner

PHUC H. TRAN

Art Unit

2416

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 11-15, 17-19, 21-29 and 31-33 is/are rejected.
- 7) ☒ Claim(s) 6, 10, 16, 20, 30 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10, and 15-34 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The method including steps are broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 8, 9, 11-14, 17-19, 21-28 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al. (Pub. No. 20030198247) in views of Manoharan et al. (6952395).

- With respect to claims 1-4, 8, 9, 11-14, 17-19, 21-28 and 32-33, Gardner disclose an auto negotiation system for a communication network/method (a port on a network device engages in auto-negotiation on a network link) comprising: establishing a connection with a link partner at a common transmission speed (e.g. paragraph 9 discloses the first device transmits over a network link in duplex mode to a second device); setting a duplex mode used for transmissions to a first duplex mode (e.g. paragraph 9); monitoring a transmission error rate with the link partner (e.g. paragraph 9, lines 3-4); changing the duplex mode to a second duplex mode in response to detecting that the transmission error rate exceeds threshold (e.g. paragraph 9 and claim 2). Gardner fails to teach in response to detecting that the transmission error rate exceeds a threshold. Manoharan teaches the detection of transmission error rate exceeds the threshold (col. 13, lines 36-40) to change the mode (as Fig. 6 shows), Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to implement the method of detecting of transmission error rate exceeds the threshold to switch between modes for protection data in communication system.

wherein the duplex mode is changed without terminating the connection with the link partner (e.g. the duplex mode is change in paragraph 9 and 10 without terminating the link);

wherein the first duplex mode comprises full duplex and the second duplex mode comprises half duplex (e.g. paragraph 14);

wherein the first duplex mode comprises half duplex and the second duplex mode comprises full duplex(e.g. paragraph 15);

further comprising: forcing the transmission speed to a predetermined link speed, wherein the connection is established if the link partner transmits at the predetermined link speed (e.g. the paragraph 9 discloses the link from half to full duplex);

wherein the monitored transmission error rate comprises a bit error ratio of a number of bits received in error to a total number of bits received within a predefined time window (e.g. paragraph 16, lines 14-15);

detect a transmission speed of the link partner after determining that the link partner does not have auto-negotiation enabled, wherein the common connection speed comprises the detected transmission speed of the link partner (e.g. the detecting a collision in half or full duplex);

4. Claims 5, 7, 15, 17, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner in view of Yang et al. (5,414,700).

- With respect to claims 5, 7, 15, 17, 29 and 31, Gardner discloses all the subject matter of the claimed invention with the exception of setting a flag in a hardware register to cause the hardware to transmit in the second duplex mode while maintaining the connection with the link partner and using auto-negotiation when establishing the connection; and detecting a transmission speed of the link partner after determining that the link partner does not have auto-negotiation enabled, wherein the common connection speed comprises the detected transmission speed of the link partner in a communications network. Yang from the same or similar field of endeavor teaches a provision of setting a flag in a hardware register to cause the hardware to transmit in the second duplex mode while maintaining the connection with the link partner (see

column 13 lines 14-19) and using auto-negotiation when establishing the connection (see column 12 lines 46-57). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use setting a flag in a hardware register to cause the hardware to transmit in the second duplex mode while maintaining the connection with the link partner and using auto-negotiation when establishing the connection as taught by Yang et al. in the communication network of Gardner. The setting a flag in a hardware register to cause the hardware to transmit in the second duplex mode while maintaining the connection with the link partner and using auto-negotiation when establishing the connection can be modified into the network of Gardner since it does teach different mode of the communications. The motivation for setting a flag in hardware register to cause the hardware to transmit in the second duplex mode while maintaining the connection with the link partner and using auto-negotiation when establishing the connection being that it adapting the system's mode.

Response to Arguments

5. Applicant's arguments with respect to claims 1-5, 7-9, 11-15, 17-19, 21-29, and 31-33 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

6. Claims 6, 10, 16, 20, 30, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO 892

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571)272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHUC H TRAN/
Primary Examiner, Art Unit 2416